

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

MARKOVITZ & GERMINARO,)	
)	
Plaintiff,)	Civil Action No. 2:22-1344
)	
v.)	Judge Cathy Bissoon
)	Magistrate Judge Patricia L. Dodge
BERKLEY INSURANCE COMPANY,)	
)	
Defendant.)	

MEMORANDUM ORDER

This case has been referred to United States Magistrate Judge Patricia L. Dodge for pretrial proceedings in accordance with the Magistrates Act, 28 U.S.C. §§ 636(b)(1)(A) and (B), and Local Rule of Civil Procedure 72.

On June 26, 2023, the Magistrate Judge issued a Report (Doc. 30) recommending that Berkley Insurance Company's ("Defendant's") 12(b)(6) Motion to Dismiss for Failure to State a Claim (Doc. 16) be denied. Service of the Report and Recommendation was made, and Defendant filed Objections on July 10, 2023. (Doc. 31). Plaintiff filed a Response to Defendant's Objections on July 24, 2023. (Doc. 32).

After a *de novo* review of the pleadings and documents in the case, together with the Report and Recommendation and the Objections thereto, it hereby is **ORDERED** that Defendant's Motion to Dismiss the Amended Complaint for Failure to State a Claim is

DENIED; and the Report and Recommendation is **ADOPTED** as the Opinion of the District Court.¹

IT IS SO ORDERED.

August 28, 2023

s/Cathy Bissoon
Cathy Bissoon
United States District Judge

cc (via Electronic Filing):

Counsel of Record

¹ In so ruling, the Court notes that the Magistrate Judge's Report does not conclude that the policy exclusions at issue *per se* do not apply or otherwise reject Defendant's position outright. Rather, it finds that, viewing the Amended Complaint in the light most favorable to Plaintiff, the matters raised are inappropriate for resolution on a motion to dismiss.